



# National Labor Relations Board

## Weekly Summary of NLRB Cases

Division of Information

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**Correction:** The List of Unpublished Board Decisions and Orders in Representation Cases in the last issue (W-3101) should have identified *Printpack Inc.*, 14-RD-1864, as an unpublished reversal of the hearing officer's report.

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*Church Homes, Inc. d/b/a Avery Heights* (34-CA-9168; 349 NLRB No. 81) Hartford, CT April 27, 2007. In a supplemental decision and order, the Board determined the Respondent shall pay three discriminatees \$286,411 in backpay and make payments on behalf of the three individuals to the New England Pension Fund totaling \$45,459. [\[HTML\]](#) [\[PDF\]](#)

Chairman Battista and Member Walsh agreed with the administrative law judge that the uniform/longevity allowance in the collective-bargaining agreement is properly included in the calculation of gross backpay for the discriminatees, and that the 18% interest on the union pension fund contributions is appropriate. Member Schaumber agreed that the allowance should be included in the award of backpay, though for reasons different from the judge. In his view, the allowance payment was a benefit that the Respondent provided to employees. If an interim employer did not provide the same type of uniform maintenance benefit, then it would obviously constitute a loss to the employee. Here, the Respondent failed to show that the three discriminatees either received such a benefit or were not required to maintain uniforms during any interim employment.

For the reasons set forth in his dissent in *Ryan Iron Works, Inc.*, 345 NLRB No. 56 (2005), Member Schaumber, contrary to his colleagues and the judge, would not award 18% interest on the Union pension fund contributions to be made pursuant to the order in this case.

(Chairman Battista and Members Schaumber and Walsh participated.)

Hearing at Hartford on Aug. 23, 2006. Adm. Law Judge Eleanor MacDonald issued her supplemental decision Dec. 27, 2006.

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*The Commercial Division 67 of the Boston Printing Pressmen Local 3* (1-CD-1060; 349 NLRB No. 80) Braintree, MA April 23, 2007. This is a jurisdictional dispute proceeding under Section 10(k) of the Act. The charge was filed by George H. Dean Co. (the Employer) on Oct. 18, 2006, alleging that the Respondent, the Commercial Division 67 of the Boston Printing Pressmen's Local 3 (Local 3), violated Section 8(b)(4)(D) by engaging in proscribed activity with an object of forcing the Employer to assign bindery work at a new copy center at the Employer's Braintree, MA facility to employees it represents rather than to employees represented by Graphic Communications Conference/Teamsters, Boston Local 600M. [\[HTML\]](#) [\[PDF\]](#)

After considering all the relevant factors, the Board concluded that employees represented by Local 3 are entitled to continue performing the work in dispute based on employer preference, and economy and efficiency of operations.

(Chairman Battista and Members Liebman and Kirsanow participated.)

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*Reliable Trucking, Inc.* (32-RC-5367; 349 NLRB No. 79) Stockton, Pleasanton, Redding, and Woodland, CA April 23, 2007. In this mail-ballot election case, the Board majority (Members Kirsanow and Walsh; Chairman Battista dissented in part), applying the factors set forth in *Phillips Chrysler Plymouth*, 304 NLRB 16 (1991), agreed with the administrative law judge, who served as hearing officer, that the Employer has not met its burden of showing that the election should be set aside on the basis of a single incident in which Teamsters Local 853 interrupted the Employer's off-site meeting with employees. In so concluding, however, they disagreed with the judge's finding that the Union's actions were likely to cause fear among the employees, particularly given that the Union did not direct any threats towards employees, and one employee stood up and directly challenged the Union. [\[HTML\]](#) [\[PDF\]](#)

The election, held between Aug. 10 and 31, 2005, resulted in a tally of ballots with 43 votes for and 38 votes against the Petitioner (Teamsters Local 853), with six challenged ballots, a sufficient member to affect the results. The Petitioner and Employer subsequently withdrew two challenges. In the absence of exceptions, the Board adopted the judge's sustaining of the remaining four challenges and his recommendation not to count the two ballots as to which the challenges were withdrawn because the ballots no longer were determinative.

The incident at issue took place on Aug. 9, 2005, at a private hotel room rented by the Employer to hold a meeting for 15-20 employees regarding the election that was to commence the next day. During the meeting, in a darkened room while a slide show was underway, seven or eight union agents barged in, disrupted the meeting, yelled at, and exchanged profanities with, employees and the Employer's representatives. In his dissenting opinion, Chairman Battista, explaining why he would find the Union's conduct objectionable, noted: "The union agents' belligerent conduct conveyed to the employees at the meeting that the Employer was powerless to enforce its own right to conduct the meeting and to control the premises. Even the hotel's agents were unable to enforce the hotel's property rights. The union agents left only after the police arrived and led them out."

(Chairman Battista and Members Kirsanow and Walsh participated.)

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*Shisler Electrical Contractors, Inc.* (3-CA-22768; 349 NLRB No. 82) Ithaca, NY April 27, 2007. In this *FES* case, the administrative law judge found that the Respondent violated Section 8(a)(3) and (1) of the Act by refusing to consider and hire applicants and paid union organizers Gary Kirton and Gary Fulcher because of their union activities. The Board adopted the judge's finding that the Respondent unlawfully refused to consider and hire Kirton, but reversed his findings as to Fulcher. The Board deferred the General Counsel's request for a tax reimbursement remedy to the compliance stage of this proceeding. Member Schaumber would find that the General Counsel failed to establish a prima facie case of discriminatory refusal to consider and hire Kirton. [\[HTML\]](#) [\[PDF\]](#)

As to Fulcher, the Board found that the General Counsel had not satisfied the first prong of the *FES* refusal-to-consider test because the record does not show that the Respondent excluded him from the hiring process. To the contrary, the Respondent's president accepted Fulcher's employment application and resume, interviewed him at the firm's offices, and discussed Fulcher's experience and qualifications.

However, contrary to the judge, the Board found that the General Counsel had not established all the elements of a discriminatory refusal to hire Fulcher; specifically, that the General Counsel failed to satisfy his burden of showing that the Respondent was hiring or had concrete plans to hire at a time when Fulcher's applications was active.

Contrary to his colleagues (Chairman Battista and Member Schaumber), Member Walsh, dissenting on this issue, would find that the Respondent violated Section 8(a)(3) and (1) by refusing to hire Fulcher. Member Walsh recognizes the existence of language in footnote 18 of *FES*, relied on by his colleagues, that places on the General Counsel the burden of showing that an application "would still be regarded as active when [an] opening occurred." However, he would find that an application would "still be regarded as active" if the employer could have chosen to consider it and there is nothing that would have precluded the employer from doing so.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Electrical Workers IBEW Local 241; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Ithaca, June 12-13 and Sept. 27, 2001. Adm. Law Judge Paul Buxbaum issued his decision Jan. 7, 2002.

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*United Rentals, Inc.* (21-CA-36814, 36930; 349 NLRB No. 83) Pico Rivera, CA April 27, 2007. Affirming the administrative law judge, the Board found that by discontinuing reviews and increases in 2005 for unit employees at its Pico Rivera, CA facility, the Respondent violated Section 8(a)(5) of the Act. "[T]he Respondent's practice of conducting merit reviews and adjusting wages based on those reviews and other fixed criteria was an established practice regularly expected by its employees, and consequently a term or condition of employment," the Board held. [\[HTML\]](#) [\[PDF\]](#)

Since at least 2001, the Respondent's annual practice had been to evaluate employee performance and, effective April 1 of each year, to grant merit-based wage increases. On March 4, 2005, Operating Engineers Local 12 was certified as the bargaining representative of a unit of the Respondent's employees at its facility in Pico Rivera. In 2005, without providing the Union notice and an opportunity to bargain, the Respondent failed to give evaluations and wage increases to Pico Rivera's newly-represented unit employees, though it continued its established practice for the nonunit employees at Pico Rivera and employees at its other facilities.

(Members Liebman, Schaumber, and Kirsanow participated.)

Charges filed by Operating Engineers Local 2; complaint alleged violation Section 8(a)(1) and (3). Hearing at Los Angeles on Nov. 1-2, 2005. Adm. Law Judge William G. Kocol issued his decision Jan. 13, 2006.

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### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*Advanced Heating & Cooling, Inc. d/b/a Advent Heating & Cooling Co.* (Sheet Metal Workers Local 19) Levittown, PA April 25, 2007. 4-CA-33991, et al.; JD(ATL)-14-07, Judge Margaret G. Brakebusch.

*The Finley Hospital* (Service Employees Local 199) Dubuque, IA April 25, 2007. 33-CA-14942, et al.; JD-28-07, Judge Ira Sandron.

*Joseph S. Lombardo d/b/a Modern Graphics and Design* (Painters District Council 4) Tonawanda, NY April 25, 2007. 3-CA-25292; JD-27-07, Judge Wallace H. Nations.

*Spirit Construction Services, Inc.* (Wisconsin Pipe Trades Association) Green Bay, WI April 27, 2007. 30-CA-17601, 17604; JD-30-07, Judge Arthur J. Amchan.

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### NO MERIT IN THE RESPONDENT'S DEFENSES

*(In the following case, the Board granted the General Counsel's motion for summary judgment on the grounds that the Respondent has not raised any genuine issue of material fact as to the allegations of the complaint.)*

*JBM, Inc. d/b/a Bluegrass, Satellite, Inc.* (an Individual) (9-CA-42410; 349 NLRB No. 85) Florence, KY April 27, 2007. [\[HTML\]](#) [\[PDF\]](#)

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**LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS  
IN REPRESENTATION CASES**

*(In the following cases, the Board considered exceptions to  
Reports of Regional Directors or Hearing Officers)*

**DECISION AND CERTIFICATION OF REPRESENTATIVE**

*Walker Methodist Health Center, Inc.*, Minneapolis, MN, 18-RC-17146, April 25, 2007  
(Members Liebman, Kirsanow, and Walsh)  
*The American University*, Washington, DC, 5-RC-16033, April 27, 2007  
(Chairman Battista and Members Liebman and Walsh)

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*(In the following cases, the Board adopted Reports of  
Regional Directors or Hearing Officers in the absence of exceptions)*

**DECISION AND CERTIFICATION OF REPRESENTATIVE**

*Frontier Systems Integrators, Inc.*, Arlington, VA, 5-RC-16071, April 26, 2007  
(Chairman Battista and Members Liebman and Walsh)

**DECISION AND CERTIFICATION OF RESULTS OF ELECTION**

*Primary Care Ambulance, Inc.*, Staten Island, NY, 29-RC-11393, April 26, 2007  
(Chairman Battista and Members Liebman and Walsh)  
*Latrobe Window Cleaning Co., Inc.*, Seward, PA, 6-RC-12562, April 27, 2007  
(Chairman Battista and Members Liebman and Walsh)  
*Serco Management Services, Inc.*, Salem, OR, 36-RC-6368, April 27, 2007  
(Chairman Battista and Members Liebman and Walsh)

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*(In the following cases, the Board granted requests for review  
of Decisions and Directions of Elections (D&DE) and  
Decisions and Orders (D&O) of Regional Directors)*

*St. Mary Home*, West Hartford, CT, 34-RC-2119, April 25, 2007 (Chairman Battista and  
Members Schaumber and Kirsanow)

***(In the following cases, the Board denied requests for review  
of Decisions and Directions of Elections (D&DE) and  
Decisions and Orders (D&O) of Regional Directors)***

*AlSCO, Inc.*, Salt Lake City, UT, 10-UC-237, April 25, 2007 (Members Liebman, Kirsanow, and Walsh)  
*The Coca-Cola Bottling Co. of Colorado and Northern Wyoming*, Denver, CO, 27-RC-8473, April 25, 2007 (Members Liebman, Kirsanow, and Walsh)  
*SSC Fenton Operating Co., LLC d/b/a Crestmont Healthcare Center*, Fenton, MI, 7-RC-23077, et al., April 25, 2007 (Members Liebman, Kirsanow, and Walsh)  
*Richmond Health Care d/b/a Sunrise Health and Rehabilitation Center*, Plantation, FL, 12-RC-8064, et al., April 25 2007 (Members Liebman, Kirsanow, and Walsh)  
*Walker Methodist Health Center, Inc.*, Minneapolis, MN, 18-RM-17157, April 25, 2007 (Members Liebman, Kirsanow, and Walsh)  
*Walker Methodist Health Center, Inc.*, Minneapolis, MN, 18-RM-1376, April 25, 2007 (Members Liebman, Kirsanow, and Walsh)  
*Walker Methodist Health Center, Inc.*, Minneapolis, MN, 18-RM-1377, April 25, 2007 (Members Liebman, Kirsanow, and Walsh)

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***Miscellaneous Decisions and Orders***

**ORDER [granting review solely with respect to the Regional Director's finding that the Baristas and Head Baristas are accreted to the existing bargaining unit; and denying review with respect to the Regional Director's declining to defer to the arbitration award]**

*Milwaukee City Center*, Milwaukee, WI, 30-UC-419, April 25, 2007 (Chairman Battista and Members Schaumber and Kirsanow; Members Liebman and Walsh dissenting)

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